

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re : Douglas LeCrone, Daniel A. Murphy and Denis Hall  
Serial No. : 10/692,285  
Filed : October 23, 2003  
FOR : METHOD AND APPARATUS FOR MONITORING UPDATE  
ACTIVITY IN A DATA STORAGE FACILITY  
EXAMINER : Khanh Pham  
ART UNIT : 2125

April 16, 2007

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE  
OFFICE ACTION

Applicants hereby petition the Examiner to revive the above-identified patent application because Applicant's representative failed to receive an Office Action.

According to the United States Patent and Trademark Office records available through Private Pair, a Notice of Non-Compliant Amendment was sent to George A. Herbster, attorney of record in the above-identified application on or about August 10, 2006.

The attached Declaration of Mary C. Hoggard describes the steps Mary C. Hoggard takes upon receipt of any document like the Notice of Non-Compliant Amendment and the steps she took to

determine whether the Notice was ever received. That Declaration (1) demonstrates that Mary C. Hoggard is an experienced docket clerk and (2) defines the steps in which mail has been handled in this office since 1990.

The attached Declaration of George A. Herbster describes the operation the docketing system used in this office. It also describes a search and results of that search. Specifically, that Declaration sets forth the fact that only a February 10, 2007 entry would still have been included in the active file. A copy of the calendar page for that date is attached to the Herbster Declaration. Any earlier entries are now archived and that the archive has been searched. Only the entries for prior responses to (1) a Notice of Missing Parts and (2) the Office Action for which a response was due August 3, 2006 and filed on that same date. The specific entries are included in Exhibit 2 to the Herbster Declaration.

A "print screen" copy of the Private Pair entry for the above-identified application contains two entries for the Notice of Non-Compliant Amendment. An inspection of the images discloses what appear to be two different copies of the Notice of Non-Compliant Amendment in the file.

We conclude that the foregoing Notice of Non-Compliant Amendment was either (1) never mailed from the United States Patent and Trademark Office or (2) lost in the mail. In either event, the Notice was never received by this office.

A response overcoming the issues raised in the Notice of Non-Compliant Amendment is filed herewith.

Therefore Applicants respectfully request that the prosecution of this application be continued as if the response to the Notice of Non-Compliant Amendment had been filed in a timely manner.

Applicants are paying the petition fee. If, however, it is determined that the petition fee is not required, Applicants respectfully request a refund to their Deposit Account No. 05-0889.

If there are any questions, we urge the Examiner to call us collect.

Respectfully Submitted,

/George A Herbster/

George A. Herbster,  
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(978) 526-8111

ATTACHMENT TO  
 PETITION TO REVIVE APPLICATION BASED ON A FAILURE TO RECEIVE  
 OFFICE ACTION

PRIVATE PAIR PRINT SCREEN

Secure Patent Application Information Database									
10/10/2005		Order Generated Application as Filed			Order Generated File Name			www.uspto.gov	
Method and apparatus for monitoring update activity in a data storage facility									
Select New Case	Application by	Applicant/Inventor	Image File	Category	Patent No.	Address	Class	Priority	Publication
	Agency/Office	Date	History	Unusual	Date	Document/Inventor/Assignor			Revised
This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click Start Download									
Available Documents									
Mail Room Date	Document Description				Document Category	Page Count	Select All	Start Download	Clear All
08-10-2005	Update to the available information of Non-Compliance				PROSECUTION	2	<input type="checkbox"/>		
08-10-2005	Update to the available information of Non-Compliance				PROSECUTION	2	<input type="checkbox"/>		
08-09-2005	Amendment of Patent Non-Final Rejection				PROSECUTION	1	<input type="checkbox"/>		
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05-03-2005	Amendment of Patent Non-Final Rejection				PRIOR ART	1	<input type="checkbox"/>		
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